

**REMARKS/ARGUMENTS**

The 3/11/05 Office Action rejected pending claims 1-8. This response amends claims 1-5, and adds claim 9. Claim 9 has been added to provide varied scope of claim coverage, and is a method claim, which is similar in many respects to the system recited by claim 1.

**Rejection of Claims 2-4 under 35 USC §112**

The Office Action rejected claims 2-4 as being indefinite because the claims rely on the melanin content of the skin, and state that this is “a use factor that does not impact the structure of the apparatus.” It is respectfully submitted that this basis for the rejection of the claims is not entirely clear. However, in order to improve the form of the claims, the above amendments are provided to claims 2-4.

It is submitted that the controller, as recited by amended claims 2-4, is unique and definite, in that it controls the driver circuit of the system so that different regions of the light emitting devices are driven differently to provide different treatments to different sub-areas of skin. It is respectfully submitted that the operation of the controller provides a structure which is programmed to operate in particular way, and this operation allows for the driving different regions of light emitting devices differently, and as determined by characteristics of the sub-area of tissue associated with a particular region of light emitting devices.

As shown above, claim 3 has been amended to specify that the light treatment for tanning is applied based on signals from the sensing device. Thus, this operation clearly allows for an operation where the light emitting devices could be driven for an initial time period where the devices do not provide sufficient energy tanning, but allow for the sensing devices to sense the amount of reflected light and thereby provide this information to the controller, which then determines which sub-areas should be subjected to light treatments for inducing tanning.

**Rejection of Claims under 35 USC §102(b)**

Claims 1, 2, 4 and 6-8 were rejected under 35 USC §102(b) as being anticipated by US Patent 6,063,108 (Salansky et al.).

Salansky et al. teach a system which can include an array of optical diodes. Salansky col. 24: lines 14-16. It appears that a controller determines which diodes are turned on, and which are not, based on a protocol selected by a user. See, e.g., Salansky col. 34-40. Salansky et

al., for example, discuss enabling, or disabling, a unit to allow a user to select from different protocols. Salansky col. 23:24-33. The operation of Salansky, appears to provide that in accordance with different selected protocols, different light treatments are provided, which could include turning on different patterns of LEDs. The light protocol of Salansky et al. is intended to provide some therapeutic effect to the patient such as providing for treating ulcers, wounds, whiplash, muscle spasms etc. See, e.g., Salansky col. 19, table 9. However, it is respectfully submitted that none of the teaching in Salansky appears to be remotely related to the idea of controlling the driving of a plurality of light emitting devices based on the melanin content of different sub-areas of tissue being treated by the array, as recited by claim 1.

Indeed the teaching of Salansky appears to be directed to the general treatment of a range of different ailments, and suggests that application of light energy may provide an effective treatment. However, the particular pattern of LEDs which are turned on in accordance with the Figs. 11 and 12 of Salansky, do not have any relation to the melanin content, or pigmentation of the patients tissue.

Thus, in light of the above it is respectfully submitted that claim 1 is not disclosed or suggested by Salansky et al. Further, it is respectfully submitted that claims 2-8 and depend from claim 1 and are patentable for at least the same reasons as claim 1.

### **Rejection of Claims under 35 USC §103**

Claims 3 and 5 were rejected under 35 USC §103 as being unpatentable over Salansky et al. in view of US Patent no. 6,596,106 (Vreman et al.). It is respectfully noted that neither Salansky, nor Vreman et al appear to contain any teaching regarding driving different regions of an array of light emitting devices differently so as to provide different light treatments to different sub-areas of tissue based on the different melanin content in the different sub-areas.

While Vreman et al. does provide some general discussion regarding using bilirubin sensors, it appears that this operation is entirely unrelated to determining the operation of a driver circuit based on the melanin content in different sub-areas of tissue. Further, Fig. 4 of Salansky does not provide any suggestion that one should monitor the reflected light to determine the operation of driving circuit driving an array of light emitting devices. Indeed as shown in Salansky et al., Fig. 4 is provided to represent different major optical pathways in the skin. See, e.g., Salansky col. 13: lines 58-60. Notably, however, there is not suggestion that one should

sense the reflected light and then determine which LEDs should be turned based on the sensed reflected light. Thus, even if one were to combine the teaching of the Salansky et al and Vreman et al. one would still lack important elements of claims 3 and 5.

**Conclusion**

For the reasons set forth above, it is believed that all claims present in this application are patentably distinguished over the references, and in condition for allowance. Therefore, reconsideration is requested, and it is requested that this application be passed to allowance.

Respectfully submitted,

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